

Michelle B. Ghaltchi, State Bar No. 242482
MANNING & KASS
ELLROD, RAMIREZ, TRESTER, LLP
15th Floor at 801 Tower
801 South Figueroa Street
Los Angeles, CA 90017
Telephone: (213) 624-6900
Facsimile: (213) 624-6999
Email: mbg@manningllp.com

Attorneys for Defendants
COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and
MARVIN CAVANAUGH

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DESMOND CARTER,

Plaintiff,

vs.

COUNTY OF LOS ANGELES; A
POLITICAL SUBDIVISION OF THE
STATE OF CALIFORNIA; BONDELL
GOLDEN, an individual, DENNIS BURNS,
an individual; MARVIN CAVANAUGH, an
individual; AND DOES 1 THRU 10
inclusive,

Defendants.

Case No.: CV-11-5543-JHN
(SSx)

**ANSWER OF DEFENDANTS
COUNTY OF LOS
ANGELES, BONDELL
GOLDEN, DENNIS BURNS,
AND MARVIN CAVANAUGH
TO PLAINTIFF'S
COMPLAINT; DEMAND
FOR JURY TRIAL**

Complaint filed: July 6, 2011

Defendants COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS
BURNS, and MARVIN CAVANAUGH answering Plaintiff's Complaint filed on
July 6, 2011, admit, deny and allege as follows:

1. Answering paragraph 1, defendants deny the allegations contained therein.
2. Answering paragraph 2, defendants deny the allegations contained therein.
3. Answering paragraph 3, defendants admit the allegations contained

1 therein.

2 4. Answering paragraph 4, defendants admit the allegations contained
3 therein.

4 5. Answering paragraph 5, defendants deny the allegations contained
5 therein.

6 6. Answering paragraph 6, defendants lack sufficient information and
7 belief upon which to answer the allegations contained therein, and on that basis deny
8 the allegations.

9 7. Answering paragraph 7, this is a restatement of law and/or argument. No
10 factual allegations are made therein, and on that basis the paragraph goes
11 unanswered.

12 8. Answering paragraph 8, this is a restatement of law and/or argument. No
13 factual allegations are made therein, and on that basis the paragraph goes
14 unanswered. Defendants deny and deprivation of plaintiff's rights occurred.

15 9. Answering paragraph 9, this is a restatement of law and/or argument. No
16 factual allegations are made therein, and on that basis the paragraph goes
17 unanswered.

18 10. Answering paragraph 10, this is a restatement of law and/or argument.
19 No factual allegations are made therein, and on that basis the paragraph goes
20 unanswered.

21 11. Answering paragraph 11, this is a restatement of law and/or argument.
22 No factual allegations are made therein, and on that basis the paragraph goes
23 unanswered.

24 12. Answering paragraph 12, defendants deny the allegations contained
25 therein.

26 13. Answering paragraph 13, defendants deny the allegations contained
27 therein.

28 14. Answering paragraph 14, defendants deny the allegations contained

1 therein.

2 15. Answering paragraph 15, defendants deny the allegations contained
3 therein.

4 16. Answering paragraph 16, defendants lack sufficient information and
5 belief upon which to answer the allegations contained therein, and on that basis deny
6 the allegations.

7 17. Answering paragraph 17, defendants lack sufficient information and
8 belief upon which to answer the allegations contained therein, and on that basis deny
9 the allegations.

10 18. Answering paragraph 18, defendants deny the allegations contained
11 therein. However, defendants admit a letter was sent to plaintiff on September 3,
12 2010, notifying him of his discharge.

13 19. Answering paragraph 19, which incorporates by reference the
14 allegations of other paragraphs of the pleading, defendants to the same extent
15 incorporate by reference the answers provided herein to those paragraphs.

16 20. Answering paragraph 20, defendants deny the allegations contained
17 therein.

18 21. Answering paragraph 21, defendants deny the allegations contained
19 therein.

20 22. Answering paragraph 22, defendants deny the allegations contained
21 therein.

22 23. Answering paragraph 23, defendants deny the allegations contained
23 therein.

24 24. Answering paragraph 24, defendants deny the allegations contained
25 therein.

26 25. Answering paragraph 25, defendants deny the allegations contained
27 therein.

28 26. Answering paragraph 26, defendants deny the allegations contained

1 therein.

2 27. Answering paragraph 27, defendants deny the allegations contained
3 therein.

4 28. Answering paragraph 28, defendants deny the allegations contained
5 therein.

6 29. Answering paragraph 29, defendants deny the allegations contained
7 therein.

8 30. Answering paragraph 30, defendants deny the allegations contained
9 therein.

10 FIRST AFFIRMATIVE DEFENSE

11 The complaint fails to state a cause of action against defendants COUNTY OF
12 LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and MARVIN
13 CAVANAUGH.

14 SECOND AFFIRMATIVE DEFENSE

15 Plaintiff has failed to mitigate the damages, if any, which plaintiff has
16 sustained, and to exercise reasonable care to avoid the consequences of harms, if any,
17 in that, among other things, plaintiff has failed to use reasonable diligence and to
18 take reasonable steps to reduce any damages.

19 THIRD AFFIRMATIVE DEFENSE

20 Plaintiff's recovery is barred for failure to timely comply with the provisions
21 of the claims statutes, including, but not limited to, Government Code sections 901,
22 905, 905.2, 911.2, 945.4 and/or 946.6.

23 FOURTH AFFIRMATIVE DEFENSE

24 The plaintiff's recovery is barred because public entities and employees are
25 immune from liability for any act or omission while exercising due care in the
26 execution or enforcement of any law.

27 FIFTH AFFIRMATIVE DEFENSE

28 The complaint fails to set forth facts sufficient to constitute a cause of action

1 for punitive damages because a public entity is immune from liability for damages
2 awarded under Civil Code section 3294 or other damages imposed primarily for the
3 sake of example and by way of punishing the defendant.

4 SIXTH AFFIRMATIVE DEFENSE

5 The complaint fails to set forth facts sufficient to constitute a cause of action
6 for punitive damages because a peace officer is not liable for punitive damages
7 absent clear and convincing proof of malice, oppression or reckless disregard for
8 plaintiff's rights.

9 SEVENTH AFFIRMATIVE DEFENSE

10 The plaintiff's claim for emotional distress is barred because defendant had no
11 knowledge of plaintiff's susceptibility to emotional distress and plaintiff alleged no
12 more than that which a reasonable person would have been able to adequately cope.

13 EIGHTH AFFIRMATIVE DEFENSE

14 The plaintiff's claim under the Federal Civil Rights Act is barred because
15 common law causes of action do not constitute cognizable claims under 42 U.S.C. §
16 1983.

17 NINTH AFFIRMATIVE DEFENSE

18 The plaintiff's claim under the Federal Civil Rights Act is barred because the
19 complaint fails to allege facts that go beyond mere tortious conduct and rise to the
20 dignity of a civil rights violation.

21 TENTH AFFIRMATIVE DEFENSE

22 These peace officer defendants are immune from liability for plaintiff's federal
23 civil rights claims based upon qualified immunity because they did not violate
24 plaintiff's constitutional rights, and even if plaintiff's rights were violated, they were
25 not clearly established at the time such that a reasonable peace officer would know
26 his or her actions were wrongful.

27 ELEVENTH AFFIRMATIVE DEFENSE

28 That at no time and place mentioned in the Complaint, did Defendants deprive

1 Plaintiff of any right, privilege, or immunity guaranteed by the Constitution or laws
2 of the United States and, therefore, Defendants are immune from liability.

3 TWELFTH AFFIRMATIVE DEFENSE

4 Any state law claims are barred by Plaintiff's failure to comply with the
5 Government Tort claims presentation requirements, Government Code § § 900, et
6 seq., including, but not limited to §§ 900, 900.4, 901, 905, 905.2, 910, 911, 911.2,
7 911.4, 945.4, 945.6, 946.6, 950.2 and 950.6.

8 THIRTEENTH AFFIRMATIVE DEFENSE

9 That a public employee may not be held liable for injuries or damages, if any,
10 caused by failure to adopt or by adoption of an enactment or by failure to enforce an
11 enactment and/or law, for an injury caused by his issuance, denial, suspension or
12 revocation or by his failure or refusal to issue, deny, suspend or revoke, any permit,
13 license, certificate, approval, order, or similar authorization, where he is authorized
14 by enactment to determine whether or not such authorization should be issued,
15 denied, suspended or revoked, pursuant to Government Code, Sections 818.2, 818.4,
16 818.8, 821 and 821.2. Based thereon, Defendants are immune from liability for any
17 injuries claimed by Plaintiff, herein.

18 FOURTEENTH AFFIRMATIVE DEFENSE

19 There may not be liability for any alleged civil rights violation committed by
20 Defendant(s) and/or their subordinates, absent a showing that the violation was
21 committed pursuant to an official policy or custom enacted or maintained by
22 Defendants. *Monell v. Department of Social Services of the City of New York*,
23 (1978) 436 U.S. 658. Defendants deny that Plaintiff was deprived of any civil right
24 as a result of any official policy, custom or practice tolerated by these Defendants.

25 FIFTEENTH AFFIRMATIVE DEFENSE

26 Plaintiff's recovery is barred because plaintiff failed to exhaust his
27 administrative remedies.
28

SIXTEENTH AFFIRMATIVE DEFENSE

The causes of action alleged in the complaint are barred by the applicable statutes of limitations, including, but not limited to the provisions of Code of Civil Procedure sections 337, 337.1, 337.15, 338(1), 338(2), 338(4), 339, 340(3) and/or 343.

SEVENTEENTH AFFIRMATIVE DEFENSE

Because the Complaint is couched in conclusory terms, answering Defendants cannot fully anticipate all affirmative defenses that may be applicable to this action. Accordingly, the right to assert additional affirmative defenses, if and to the extent that such affirmative defenses are applicable, is hereby reserved.

WHEREFORE defendants COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS BURNS, and MARVIN CAVANAUGH, pray that plaintiff take nothing by this action and that defendants be awarded costs and all other just relief.

Dated: August 29, 2011

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: /s/
Michelle B. Ghaltchi

Attorneys for Defendants,
COUNTY OF LOS ANGELES,
BONDELL GOLDEN, DENNIS
BURNS, MARVIN CAVANAUGH

DEMAND FOR JURY TRIAL

Defendants COUNTY OF LOS ANGELES, BONDELL GOLDEN, DENNIS
BURNS, and MARVIN CAVANAUGH, hereby demand trial of this matter by jury
pursuant to Federal Rules of Civil Procedure, Rule 38(b) and Local Rule 38-1.

Dated: August 29, 2011

MANNING & KASS
ELLROD, RAMIREZ, TRESTER LLP

By: /s/
Michelle B. Ghaltchi

Attorneys for Defendants,
COUNTY OF LOS ANGELES,
BONDELL GOLDEN, DENNIS
BURNS, MARVIN CAVANAUGH